


FEB 26 2014

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. DUDLEY, CLERK
BY: 
DEPUTY CLERK

CHRIS CARTY,

Plaintiff,

v.

V. PHIPPS, *ET AL.*,

Defendants.

Civil Action No. 7:13CV00533

DISMISSAL ORDER

By: Samuel G. Wilson
United States District Judge

The *pro se* plaintiff, Chris Carty, is an inmate housed at Red Onion State Prison ("ROSP") who brought this lawsuit under 42 U.S.C. § 1983 alleging the defendants, an ROSP medical administrator and physician, acted with deliberate indifference to his serious medical needs in violation of the Eighth Amendment. This case was referred pursuant to 28 U.S.C. § 636(b)(1)(B) to the Honorable Pamela M. Sargent, United States Magistrate Judge. The Magistrate Judge filed a report recommending that the court dismiss Carty's complaint under 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted. Carty objected to the Magistrate Judge's report and moved to amend his complaint to add a conspiracy claim, essentially realleging the same underlying constitutional violation, but alleging it resulted from a conspiracy. The Magistrate Judge granted Carty's motion to amend and, once again, noted his failure to state a plausible claim for relief and recommended dismissal. Carty has objected to the Magistrate Judge's latest report and recommendation, but still pleads no facts that would raise a plausible claim for relief.¹ The court, having reviewed the Magistrate Judge's reports, the objections thereto, and other pertinent portions of the record, concludes that the

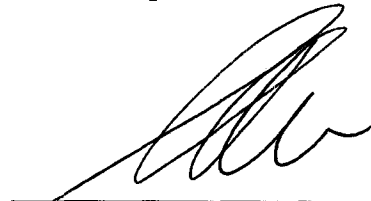
¹ One element of a § 1983 conspiracy claim is that, as a result of the conspiracy, the defendants deprived the plaintiff of a constitutional right. See *Hinkle v. City of Clarksburg, W.Va.*, 81 F.3d 416, 421 (4th Cir. 1996). Therefore, because Carty fails to state a viable Eighth Amendment claim in the first instance, his amendment to include a claim of conspiracy to violate his Eighth Amendment rights also fails.

Magistrate Judge's most recent Report and Recommendation (Docket No. 19) should be adopted.²

It is, accordingly, **ORDERED** and **ADJUDGED** that the January 22, 2014 Report and Recommendation (Docket No. 19) is **ADOPTED**; Carty's complaint, as amended, is **DISMISSED** under 28 U.S.C. § 1915A(b)(1) for failure to state a claim upon which relief may be granted; and this case is **STRICKEN** from the active docket of the court.

The Clerk is directed to send a copy of this order to the plaintiff.

ENTER: February 26, 2014.


UNITED STATES DISTRICT JUDGE

² Carty appears to be an abusive filer, as evidenced most recently in Carty v. Scarberry, No. 7:13cv00234 (W.D. Va. Feb. 25, 2014) (dismissed), in which the Magistrate Judge held an evidentiary hearing in which Carty's allegations appeared fanciful and fabricated (Docket No. 46) and, later in the same case, a videorecording showed Carty's version of events to be false, and, "[s]o much so, in fact, that it draws into question the credibility of any of [his] statements" (Docket No. 62 at 17).